**AALS INTERVIEW QUESTIONS**

**General Questions**

1. **Why legal academia?**

* Legal research and writing have been my **passion** ever **since I started law school**, and I’m particularly **excited** about writing **scholarship** that **can assist policymakers in promoting consumer welfare through behaviorally and empirically informed regulation.**
* This year, I have discovered **a new passion**—for **teaching**, as I taught my own seminar on **the law & psychology of consumer contracts.**
* I hope to be able to **pass my passion to the class** and write scholarship that will have **important policy implication and improve consumers’ well-being.**

1. **Could you provide an example of how your research informs regulation?**
   1. Sure. For example, my JLA paper finds that landlords and residential companies routinely use unenforceable terms, that deny or limit tenants’ most basic rights and remedies. My work shows that unenforceable terms are harmful to tenants, because they generate misperceptions about the law. In one experiment, tenants were about 8 times more likely to bear costs that the law imposes on the landlord after reading an unenforceable liability disclaimer than after reading a contract containing a clause acknowledging the landlord’s liability. One regulatory solution that I propose is the **imposition of statutory lease terms** that inform tenants’ of their basic rights and remedies, but of course this solution should be **complemented by strong public enforcement mechanisms or by allowing for class actions.**
   2. In my forthcoming Stanford law review paper, Sommers and I find that **consumers believe that even contract terms that conflict with a seller’s fraudulent pre-contractual representations will be upheld by courts**. The main take-away is that **regulatory agencies cannot rely on uninformed consumers to discipline sellers through private enforcement mechanisms**. They should therefore be prepared to take on the lion’s share of enforcement.
2. **Training in empirical methods?**

* I have a B.A. in international relations, where I was first exposed to empirical legal methods by taking courses in statistics and quanitative research methods.
* Harvard
  + One of my dissertation fields – empirical legal research
  + Econometrics, statistics, survey design, experimental design
  + Behavioral insights group at HBS
  + Chicago – PALS –presented my research there

**Research – implications questions**

1. **Does the phenomenon transcend beyond the retail market?**

* Yes, I focused on return policies in the retail market as a first natural test-case because it’s the poster-child example in the literature, but there is accumulating anecdotal evidence that this phenomenon **transcends to many other consumer markets** including insurance, mortgages, credit cards, housing and even airlines.
  + One example – flat tire rule—many airlines in the u.s. allow passengers who miss their flights due to unforeseen circumstances to catch the next flight at no additional cost, but you’re unlikely to read about this policy in the airline’s contract of carriage. [the Yale example]
  + Insurance companies are also known to deny many meritorious claims, while sometimes allowing for concessions when consumers complain.
  + And finally, in the context of mortgages, lending companies sometimes refrain from foreclosing on the property of delinquent borrowers, allowing them more time to repay the loan than they are required to under the agreement.
* What I want to study in future research is not **whether the phenomenon transcends to other markets**, but whether the **same factors shape sellers’ decisions of whether or not to exercise leniency, and the implications for consumers.**

1. **What are the social costs?**

* The paper discusses two types of costs: costs to **consumer welfare** and potentially **regressive distributional effects**.
* So far, the assumption in the literature has been that sellers’ selective enforcement of their terms is **welfare-enhancing,** because they use these terms to protect themselves against bad-faith consumers, while **departing in favor of just claimants**.
* But this argument did not take account of the **interaction between sellers’ incentives and consumers’ psychology**. There is abundance of evidence, including from my previous work, suggesting that even good-faith consumers might refrain from making meritorious claims in view of their belief that the contract is the **final word.**
* Consumers might be even more likely to **relent** once the seller brings the contractual term to their attention, [and this **is even in cases where their benefits from the concession exceed the costs to the seller of granting it].**
* A second concern is that **these tailored departures might lead to regressive distributive outcomes**, disproportionately benefiting white upper-class customers, because lower-income, lower-educated consumers and members of minority groups feel **less entitled**, and are less likely to insist and complain.

1. **But is it a welfare cost or only cost to *consumer* welfare?**

* It’s a welfare cost as long as the **gains to consumers from receiving the concession exceed the costs to the seller of offering the concession**. Profit-maximizing sellers will refrain from offering it to consumers, even if they have a just claim, if the costs to them of supplying the benefit exceed the costs of keeping the particular consumer dissatisfied.

1. **If so—why wouldn’t sellers offer the better term ex ante and raise prices?**

* One main reason why sellers would not offer the more generous term ex ante for a higher price is that if they offered the more generous term, they would be unable to protect themselves against opportunistic buyers who would use a more lenient policy on paper to extract gains that the seller did not intend to offer.
* A second reason may be related to **informational or behavioral market failures** – if the term is not sufficiently **salient** to consumers **ex ante**, sellers will **not be able to sufficiently adjust prices up front, even if the benefit-granting term is welfare-enhancing.** 
  + For example, if consumers do not read the contract, or underestimate the likelihood they would need to return the product, they would be unwilling to pay more for a better return policy because of their optimism bias.

1. **What’s the alternative?**

* **Two main options: to level up or down.**
* If **we level down by prohibiting sellers from selectively enforcing** **their contracts but without obliging them to adopt the higher-quality term**–consumers will be not able to enjoy the benefit, including those consumers that value the benefit at more than its cost to sellers.
  + But what could result is that some sellers will offer better terms for higher prices.
  + The problem is that these prices will also take into account sellers’ need to provide the benefit to all consumers, including those opportunistic buyers.
* **If we level up by imposing a better term**—might lead to an increase in prices. This has been the argument against mandatory warranties.
  + Might be problematic, unless we believe that there’s a market failure that prevents consumer from estimating the real price without the intervention
  + Might be complemented by promoting other ways to segment the bad-faith consumers
* **Welfare costs – when sellers adhere to their contracts even though the benefit to the consumer exceeds the cost to the seller of granting the concession**
  + So far – literature has assumed that sellers will use their rigid contractual clauses effcieicntly—selectviely enforcing them against opportunistic consumers, while exercising discretionary forgiveness towards good-faith consumers
  + But the findings suggest that sellers may often enforce their contracts even against good-faith consumers, and that they use complaints to segment (regardless of merits)
  + Complaints as a very crewd proxy – is not perfectly aligned with merits of the claim
* **A second problem --- regressive distributional outcomes**
  + To the extent that lower income consumers are less likely to insist

1. **Is it just an information problem where those with information benefit more than others—and if so—should courts intervene?**

* Bullets answer:
  + Yes—information problem, but – might require intervention because of regressive distributive effects
  + To the extent that—lower-income/educated consumers less likely to be informed
  + What can the law do?
    - Needs to look at terms that seem to be one-sided or inefficient on paper and to the extent that there is no evidence that firms use these terms only against opportunistic consumers—consider invalidating them
    - Interpret obligation to perform contracts in good faith to oblige firms to provide benefits to all good-faith consumers and not only to those who insist and complain.
* It is an information problem—but I believe that it might require legal or regulatory intervention, because of its regressive distributive effects.
* So far it has been assumed that this type of information-based segmentation, or price discrimination, is not so problematic because those who care more about getting the best bargain will invest more time in finding more information and will get better prices than those higher-income busier consumers who have a higher ability to pay.
* But empirical evidence, including my previous work, suggests that many times lower-income lower-education consumers will have less information, and therefore this information-based segmentation of consumers might generate regressive distributive outcomes.
* In these cases, I believe that courts, regulators or policymakers might want to intervene.
* One way to intervene which is less intrusive is to provide information to the lower-income, lower-education consumers but of course disclosure is not always effective
* Another way is to prohibit firms from selectively enforcing their contracts --- this will force firms to either level up and raise prices or level down by enforcing the low-quality term against all consumers.

1. **What should courts do?**

* [leveling-up leveling-down debate – ex ante legislation/regulation]
* Consider intervening by invalidating clauses that seem one-sided against the consumer when there is evidence to suggest that sellers do not only use these terms against opportunistic consumers, but actually enforce it even against good-faith consumers to extract more gains.
* Interpret the obligation to exercise contracts in good faith as prohibiting sellers from exercising leniency only to some good-faith consumers, while enforcing the contract against others
* **Interpret firms’ obligations in view of consumers’ reasonable expectations and not only in view of the contract**
* Invalidate clauses that limit consumers’ ability to access courts or use the class action mechanism, such that consumers could at least challenge clauses that seem unconscionable